100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 100-801
Part 1

PENSION-RELATED TECHNICAL CORRECTIONS

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ON

H.R. 4845

[Including cost estimate of the Congressional Budget Office]

JULY 27, 1988.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

19-006

WASHINGTON : 1988

H783-6

CONTENTS

	Page
I. LEGISLATIVE BACKGROUND	12
II. EXPLANATION OF THE BILL	13
A. Amendments Related to the Tax Reform Act of 1986 (Secs. 101–103 of the Bill)	13
1. Vesting standards	13
2. Reversions of plan assets	14
3. Time required for plan amendments	15
4. Health care continuation rules	15
5. Technical corrections to the Retirement Equity Act of 1984	17
B. Amendments Related to the Omnibus Reconciliation Act of 1986 (Sec. 201 of the Bill)	19
C. Amendments Related to the Pension Protection Act (Secs. 301–302 of the Bill)	20
1. Minimum funding standard and deductions	20
2. Employer access to plan assets; limitations on employer reversions upon plan termination	26
3. Treatment of plan terminations	26
4. PBGC premiums	28
5. Miscellaneous	28
III. BUDGET EFFECTS	33
IV. VOTE OF THE COMMITTEE AND OTHER RULES TO BE DISCUSSED UNDER HOUSE RULES	33
A. Vote of the Committee	33
B. Other Matters	33
V. CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED	35

100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 100-801
Part 1

PENSION-RELATED TECHNICAL CORRECTIONS

JULY 27, 1988.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 4845, which on June 16, 1988, was referred jointly to the Committee on Ways and Means and the Committee on Education and Labor]

[Including cost estimate by the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4845) to make technical corrections in pension-related provisions in the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

19-006

SECTION 1. AMENDMENT OF 1986 CODE, ETC.

For purposes of this Act—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) REFORM ACT.—Except where incompatible with the intent, the term "Reform Act" means the Tax Reform Act of 1986.

(3) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

TITLE I—AMENDMENTS RELATED TO TAX REFORM ACT OF 1986

SEC. 101. AMENDMENTS RELATED TO TITLE XI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1113 OF THE REFORM ACT.—

(1) Section 203(a)(2) of ERISA is amended—

(A) by striking out "following" the first place it appears, and

(B) by striking out "414(f)(1)(B)" in subparagraph (C)(ii)(I) and inserting in lieu thereof "3(37)(A)(ii)".

(2) Section 1113(e)(3) of the Reform Act is amended by striking out "Section 202(B)(i)" and inserting in lieu thereof "Section 202(a)(1)(B)(i)".

(3) The second subsection (e) of section 1113 of the Reform Act is redesignated as subsection (f).

(4) Section 1113(f) of the Reform Act, as redesignated by paragraph (3), is amended by adding at the end thereof the following new paragraph:

"(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) apply (and any subsequent plan year) if—

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year."

(5)(A) Section 411(a)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B)."

(B) Paragraph (3) of section 203(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(F) A matching contribution (within the meaning of section 401(m) of the Internal Revenue Code of 1986) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of such Code, an excess deferral under section 402(g)(2)(A) of such Code, or an excess aggregate contribution under section 401(m)(6)(B) of such Code."

(6)(A) Section 411(a)(4)(A) of the 1986 Code is amended to read as follows:

"(A) years of service before age 18,".

(B) Subparagraph (A) of section 203(b)(1) of ERISA is amended to read as follows:

"(A) years of service before age 18,".

(b) AMENDMENT RELATED TO SECTION 1132 OF THE ACT.—

(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

(B) the welfare benefit plan provides retiree health benefits, and

(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.

(c) AMENDMENTS RELATED TO SECTION 1140 OF THE REFORM ACT.—

(1) Subsection (a) of section 1140 of the Reform Act is amended by striking out "or subtitle C" and inserting in lieu thereof ", subtitle C, or title XVIII of this Act".

(2) Section 1140(c) of the Reform Act is amended by inserting "on or" after "beginning" the second place it appears.

(3) Section 1140(c) is amended by adding at the end thereof the following new flush sentence:

"For purposes of paragraph (1)(B) and any other provision of this title, an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act."

(d) AMENDMENTS RELATED TO SECTION 1145 OF THE REFORM ACT.—

(1) Subsection (f) of section 303 of the Retirement Equity Act of 1984 is amended by striking out "July 24, 1984" and inserting in lieu thereof "July 17, 1984".

(2) Paragraph (3) of section 205(b) of ERISA, as added by section 1145(b) of the Reform Act, is redesignated as paragraph (4).

SEC. 102. AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 1852 OF THE REFORM ACT.—Paragraph (1) of section 4402(h) of ERISA is amended by striking out "January 12, 1982" the second place it appears and inserting in lieu thereof "January 16, 1982".

(b) AMENDMENT RELATED TO SECTION 1879 OF THE REFORM ACT.—Subsection (u) of section 1879 of the Reform Act is amended—

(1) by striking "206(h)" each place it appears in paragraphs (1) and (4)(B) and inserting in lieu thereof "204(h)";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

"(4) CORRECTION OF CROSS REFERENCE.—Section 4218(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1398(1)(A)) is amended by striking out 'section 4062(d)' and inserting in lieu thereof 'section 4069(b)'."

(c) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(1)(A) Section 106(b)(2) of the 1986 Code (relating to exception to certain plans) is amended by striking out the last sentence thereof.

(B) Section 601(b) of ERISA is amended by striking out the last sentence thereof.

(C) The amendments made by this paragraph shall apply to years beginning after December 31, 1986.

(2)(A) Section 162(k)(7)(A) of the 1986 Code is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))."

(B) Section 607(2) of ERISA is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons

maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986)."

(C)(i) Section 4980B(f)(7) of the 1986 Code, as added by the Miscellaneous Revenue Act of 1988, is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))."

(ii) The amendment made by this subparagraph shall take effect as if included in the amendments made by section 321 of the Miscellaneous Revenue Act of 1988.

(D) The amendments made by this paragraph (other than subparagraph (C)) shall apply to plan years beginning after December 31, 1988.

(3)(A) Clause (iv) of section 162(k)(2)(B) of the 1986 Code is amended to read as follows:

"(iv) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(B) Section 602(2)(D) of ERISA is amended to read as follows:

"(D) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(D), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(C)(i) Clause (iv) of section 4980B(f)(2)(B) of the 1986 Code, as added by the Miscellaneous Revenue Act of 1988, is amended to read as follows:

"(iv) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(ii) The amendment made by this subparagraph shall take effect as if included in the amendments made by section 321 of the Miscellaneous Revenue Act of 1988.

(D) The amendments made by this paragraph (other than subparagraph (C)) shall apply to plan years beginning after December 31, 1988.

(4)(A) The last sentence of section 162(k)(2)(C) of the 1986 Code is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(B) The last sentence of section 602(3) of ERISA is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(C)(i) The last sentence of section 4980B(f)(2)(C) of the 1986 Code, as added by the Miscellaneous Revenue Act of 1988, is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(ii) The amendment made by this subparagraph shall take effect as if included in the amendments made by section 321 of the Miscellaneous Revenue Act of 1988.

(5)(A) Subclause (II) of section 162(k)(2)(B)(i) of the 1986 Code is amended by striking out "paragraph (3)(F)" and inserting in lieu thereof "paragraph (3)(B) or (3)(F)".

(B) Clause (ii) of section 602(2)(A) of ERISA is amended by striking out "section 603(6)" and inserting in lieu thereof "section 603(2) or 603(6)".

(C) The amendments made by this paragraph shall apply to plan years beginning after December 31, 1988.

(d) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(1)(A) Clause (ii) of section 417(a)(3)(B) of the 1986 Code (defining applicable period) is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(B) Clause (ii) of section 205(c)(3)(B) of ERISA is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(2) Section 1898(b)(8) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to distributions after the date of the enactment of this Act."

(3) Paragraph (12) of section 1898(b) of the Reform Act is amended by striking out all of subparagraph (B) from "(B) AMENDMENT" through "follows:" and inserting the following:

"(B) AMENDMENT TO ERISA.—Section 205(h) of the Employee Retirement Income Security Act of 1974 is amended—

"(i) by striking out 'the term' in paragraphs (1) and (3) and inserting in lieu thereof 'The term';

"(ii) by striking out the comma in paragraph (1) and inserting in lieu thereof a period; and

"(iii) by striking out paragraph (2) and inserting in lieu thereof the following:".

(4) Subparagraph (B) of section 1898(d)(1) of the Reform Act is amended by striking out "Paragraph (1)" and inserting in lieu thereof "Subsection (e)(1)".

(5) Subsection (e)(1) of section 203 of ERISA is amended—

(A) by inserting "(e)" before "(1)", and

(B) by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(6) Subclause (IV) of section 205(c)(3)(B)(ii) of ERISA is amended by striking out "401(a)(11)" and inserting in lieu thereof "205".

(7) Subparagraph (B) of section 1898(b)(7) of the Reform Act is amended by striking out "Subparagraph (C) of section 205(b)(1)" and inserting in lieu thereof "Clause (i) of section 205(b)(1)(C)".

(8) Section 205(e)(2) of ERISA is amended by striking out "nonforfeitable accrued benefit" and inserting in lieu thereof "nonforfeitable right (within the meaning of section 203)".

SEC. 103. EFFECTIVE DATE.

Except as otherwise provided in this title, any amendment made by this title shall take effect as if included in the provision of the Reform Act to which such amendment relates.

TITLE II—AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986

SEC. 201. AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.

(a) AMENDMENTS RELATED TO SECTION 9202 OF THE ACT.—

(1) Section 411(b)(2) of the 1986 Code and section 204(b)(2) of ERISA are each amended by striking out subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(2) Section 411(b)(2)(C) of the 1986 Code, as redesignated by paragraph (1), is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(3) Section 204(b)(2)(C) of ERISA, as redesignated by paragraph (1), is amended by striking out "(C) and (D)" and inserting in lieu thereof "(B) and (C)".

(4) The amendments made by this subsection shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986.

(b) AMENDMENTS RELATED TO SECTION 9203 OF THE ACT.—

(1) Sections 411(a)(8)(B) of the 1986 Code and 3(24)(B) of ERISA are each amended to read as follows:

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 5th anniversary of the time a plan participant commenced participation in the plan."

(2) The amendments made by this subsection shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986.

TITLE III—AMENDMENTS RELATED TO PENSION PROTECTION ACT

SEC. 301. AMENDMENTS RELATED TO PENSION PROTECTION ACT.

(a) AMENDMENTS RELATED TO SECTION 9303.—

(1)(A) Subclause (II) of section 412(l)(3)(C)(ii) of the 1986 Code is amended by inserting "(but not below zero)" after "reducing".

(B) Subclause (II) of section 302(d)(3)(C)(ii) of ERISA is amended by inserting "(but not below zero)" after "reducing".

(2)(A) Clause (i) of section 412(l)(4)(B) of the 1986 Code is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(B) Clause (i) of section 302(d)(4)(B) of ERISA is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(3)(A) Section 412(l)(5)(C) of the 1986 Code is amended by striking out "October 17, 1987" and inserting in lieu thereof "the first plan year beginning after December 31, 1988".

(B) Section 302(d)(5)(C) of ERISA is amended by striking out "October 17, 1987" and inserting in lieu thereof "the first plan year beginning after December 31, 1988".

(4)(A) Section 412(l)(7)(D) of the 1986 Code is amended—

(i) by striking out "and" at the end of clause (iii)(I), by striking out the period at the end of clause (iii)(II) and inserting in lieu thereof ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(ii) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary."

(B) Section 302(d)(7)(D) of ERISA is amended—

(i) by striking out "and" at the end of clause (iii)(I), by striking out the period at the end of clause (iii)(II) and inserting in lieu thereof ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(ii) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury."

(5)(A) Section 412(l)(8) of the 1986 Code is amended—

(i) by striking out "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(ii) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary may provide for such reduction for purposes of any other provision which references this subsection."

(B) Section 302(d)(8) of ERISA is amended—

(i) by striking out "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(ii) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection."

(6)(A) Section 412(c)(9) of the 1986 Code is amended—

(i) by striking out "3 years" and inserting in lieu thereof "year", and

(ii) by striking out "3-YEAR" in the heading and inserting in lieu thereof "ANNUAL".

(B) Section 302(c)(9) of ERISA is amended by striking out "3 years" and inserting in lieu thereof "year".

(7) Subclause (II) of section 9303(e)(3)(C)(ii) of the Pension Protection Act is amended by inserting "(and any income allocable to such amount)" after "clause (i)".

(8)(A) Subparagraph (C) of section 412(1)(3) of the 1986 Code is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(B) Subparagraph (C) of section 302(d)(3) of ERISA is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(b) AMENDMENTS RELATED TO SECTION 9304.—

(1)(A) Subparagraph (A) of section 412(c)(10) of the 1986 Code is amended—

(i) by inserting "defined benefit" before "plan other", and

(ii) by striking out "PLANS" in the heading and inserting in lieu thereof "DEFINED BENEFIT PLANS".

(B) Subparagraph (A) of section 302(c)(10) of ERISA is amended by inserting "defined benefit" before "plan other".

(2)(A) Subparagraph (B) of section 412(c)(10) of the 1986 Code is amended—

(i) by striking out "multiemployer plan" and inserting in lieu thereof "plan not described in subparagraph (A)", and

(ii) by striking out "MULTIEMPLOYER" in the heading and inserting in lieu thereof "OTHER".

(B) Subparagraph (B) of section 302(c)(10) of ERISA is amended by striking out "multiemployer plan" and inserting in lieu thereof "plan not described in subparagraph (A)".

(3)(A) Section 412(m)(1) of the 1986 Code is amended by inserting "defined benefit" before "plan (other".

(B) Section 302(e)(1) of the 1986 Code is amended by inserting "defined benefit" before "plan (other".

(4)(A) Subparagraph (D) of section 412(m)(4) of the 1986 Code is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (1) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (l)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (l)(8)(B)) for the plan year to 100 percent."

(B) Subparagraph (D) of section 302(e)(4) of ERISA is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (d) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (d)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B)) for the plan year to 100 percent."

(5)(A) Section 101(d)(1) of ERISA is amended by striking out "an employer of a plan" and inserting in lieu thereof "an employer maintaining a plan".

(B) Section 502(c) of ERISA is amended by adding at the end thereof the following new paragraph:

"(3) Any employer maintaining a plan who fails to meet the notice requirement of section 101(d) with respect to any participant or beneficiary may in the court's discretion be liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper."

(C) Section 9304(d) of the Pension Protection Act is amended by striking out "Section" and inserting in lieu thereof "Effective with respect to plan years beginning after December 31, 1987, section".

(6)(A)(i) Subparagraph (B) of section 412(m)(1) of the 1986 Code is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B))."

(ii) Clause (ii) of section 412(d)(1)(A) of the 1986 Code is amended by inserting "(including adjustments under subsection (b)(5)(B))" after "costs".

(B)(i) Subparagraph (B) of section 302(e)(1) of ERISA is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B))."

(ii) Section 303(d) of ERISA is amended—

(I) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2),

(II) by redesignating clauses (i) and (ii) of paragraph (1) (as so redesignated) as subparagraphs (A) and (B), and

(III) by inserting "(including adjustments under section 302(b)(5)(B))" after "costs" in paragraph (1)(B) (as so redesignated).

(c) AMENDMENTS RELATED TO SECTION 9306.—

(1) The last sentence of section 412(f)(4)(A) of the 1986 Code is amended by striking out "the benefit liabilities" and inserting in lieu thereof "for benefit liabilities".

(2) The last sentence of section 303(e)(1) of ERISA is amended by striking out "the benefit liabilities" and inserting in lieu thereof "for benefit liabilities".

(3) Section 9306(f)(3) of the Pension Protection Act is amended to read as follows:

"(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988."

(d) AMENDMENTS RELATED TO SECTION 9307.—

(1)(A) Clause (iii) of section 412(b)(5)(B) of the 1986 Code is amended by striking out "for purposes of this section and for purposes of determining current liability,".

(B) Clause (iii) of section 302(b)(5)(B) of ERISA is amended by striking out "for purposes of this section and for purposes of determining current liability,".

(2)(A) Section 302(b)(5)(B) of ERISA is amended by inserting the following matter after the heading and before clause (i): "For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 302(d) for any plan year—".

(B) Section 302(b)(5) of ERISA is amended by striking out the matter following the heading thereof and preceding subparagraph (A).

(C) Subclause (I) of section 302(b)(5)(B)(ii) of ERISA is amended by striking out "average rate" and inserting in lieu thereof "the weighted average of the rates".

(3) Section 9307(f) of the Pension Protection Act is amended to read as follows:

"(f) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1987.

"(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988."

(e) AMENDMENTS RELATED TO SECTION 9311.—

(1) Section 9311(a)(2) of the Pension Protection Act is amended by striking out "plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974" and inserting in lieu thereof "residual plan assets upon termination".

(2) Section 9311(d) of the Pension Protection Act is amended—

(A) by striking out "section 4041(c)" and inserting in lieu thereof "section 4041" in paragraph (1), and

(B) by adding at the end thereof the following new flush sentence:

"Except as provided in subsection (a)(2), the amendments made by subsection (a) shall apply to any provision of the plan or plan amendment adopted after December 17, 1987."

(3) Section 9311(a)(2) of the Pension Protection Act is amended by striking out the last sentence.

(f) AMENDMENTS RELATED TO SECTION 9312.—

(1) Section 9312(b)(3)(B)(i) of the Pension Protection Act is amended—

(A) by striking out "section 4022(c)(1)" in subclause (I) and inserting in lieu thereof "section 4022(c)(3)", and

(B) by striking out "subparagraph (B) of section 4022(c)(1)" and inserting in lieu thereof "subparagraph (C) of section 4022(c)(3)".

(2) Section 9312(b)(3)(B)(ii) of such Act is amended by striking out "section 4022(c)(1)(B)" and inserting in lieu thereof "section 4022(c)(3)(C)".

(3) Section 4062(a) of ERISA is amended—

(A) by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2), and

(B) by striking out "subsection (d)" in paragraph (2) (as so redesignated) and by inserting in lieu thereof "subsection (c)".

(4)(A) Section 4064(b) of ERISA is amended by striking out "and clauses (i)(II) and (ii) of section 4062(b)(1)(A)" and inserting in lieu thereof "and section 4068(a)".

(B) Section 4068(a) of ERISA is amended by striking out the last sentence.

(5) Section 4022(c)(1) of ERISA is amended by striking out "(or in the case of a deceased participant)".

(6) Section 4022(c)(3)(B)(ii) of ERISA is amended by inserting ", and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined" after "1987".

(7) Section 9312(b)(3)(B) of the Pension Protection Act is amended by striking out clause (ii).

(8) Section 4041(c) of ERISA is amended—

(A) by striking out "(or its designee under section 4049(b))" in paragraph (2)(A)(iii)(II),

(B) by striking out "section 4049" in paragraph (2)(A)(iii)(II) and inserting in lieu thereof "section 4022(c)", and

(C) by striking out the last sentence of paragraph (3)(C)(i).

(9) Section 4070(a) of ERISA is amended by striking out "4049,".

(10) Section 9312(d)(1) of the Pension Reform Act is amended by striking out "section 4041(c)" and inserting in lieu thereof "section 4041".

(g) AMENDMENTS RELATED TO SECTION 9313.—

(1) Section 4041(d)(1) of ERISA is amended by striking out "sufficient for benefit commitments" and inserting in lieu thereof "sufficient for benefit liabilities".

(2) Section 4041(c)(2)(B) of ERISA is amended by inserting "proposed" before "termination" in the parenthetical in the second sentence.

(3) Clause (ii) of section 4041(c)(2)(A) of ERISA is amended—

(A) by inserting "unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 4062," before "certification",

(B) by inserting "and, if applicable, the proposed distribution date" after "termination date" in subclause (I), and

(C) by striking out "date" and inserting in lieu thereof "dates" in subclauses (II) through (V).

(h) AMENDMENT RELATED TO SECTION 9331.—Subparagraph (E) of section 4006(a)(3) of ERISA is amended by adding at the end thereof the following new clause:

"(v) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986."

(i) AMENDMENTS RELATED TO SECTION 9341.—

(1)(A) Section 401(a)(29)(C)(i)(II) of the 1986 Code is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment" after "amendment".

(B) Section 307(c)(1)(B) of ERISA is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment".

(2) Section 307(d) of ERISA is amended by inserting "of the Treasury" after "Secretary".

(3)(A) Section 307 of ERISA is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE.—A contributing sponsor which is required to provide security under subsection (a) shall notify the Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require."

(B) Section 4071 of ERISA is amended—

(i) by striking out "or subtitle A, B, or C" and inserting in lieu thereof ", subtitle A, B, or C, as section 302(f)(4) or 307(e)", and

(ii) by inserting "or such section" after "such subtitle".

(4)(A) Clause (i) of section 401(a)(29)(A) of the 1986 Code is amended by inserting "to which the requirements of section 412 apply" after "multiemployer plan)".

(B) Section 307(a)(1) of ERISA is amended by inserting "to which the requirements of section 302 apply" after "multiemployer plan)".

(5) Section 9341(c) of the Pension Protection Act is amended by inserting "(without regard to any extension, amendment, or modification of such agreements on or after such date of enactment)" after "ratified before the date of enactment".

(j) AMENDMENTS RELATED TO SECTION 9342.—

(1) Paragraph (11) of section 103(d) of ERISA is amended—

(A) by striking out "60 percent" and inserting in lieu thereof "70 percent", and

(B) by striking out "such percentage" and inserting in lieu thereof "the percentage which such value is of such liability.".

(2) Section 502(a)(6) of ERISA is amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (c)(2) or (i)".

(3) Section 502(c)(2) of ERISA is amended—

(A) by inserting "against any plan administrator" after "civil penalty", and

(B) by striking out "a plan administrator's" and inserting in lieu thereof "such plan administrator's".

(k) AMENDMENT RELATED TO SECTION 9343.—Section 403(c) of ERISA is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(l) AMENDMENTS RELATED TO SECTION 9345.—

(1) Section 407(d)(9) of ERISA is amended by striking out "such arrangement" and inserting in lieu thereof "such individual account plan".

(2) Section 407(f) of ERISA is amended by striking out paragraph (3).

(m) AMENDMENTS RELATED TO SECTION 9346.—

(1)(A) Clause (iii) of section 411(c)(2)(C) of the 1986 Code is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age."

(B) Subparagraph (B) of section 411(c)(2) of the 1986 Code is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date)."

(C) Section 411(c)(2) of the 1986 Code is amended by striking out subparagraph (E).

(D) Section 411(a)(7) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) ACCRUED BENEFIT ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions."

(2)(A) Clause (iii) of section 204(c)(2)(C) of ERISA is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 205(g)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age."

(B) Subparagraph (B) of section 204(c)(2) of ERISA is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 205(g)(3) (as of the determination date)."

(C) Section 204(c)(2) of ERISA is amended by striking out subparagraph (E).

(D) Paragraph (23) of section 3 of ERISA is amended by adding at the end thereof the following new flush sentence: "The accrued benefit of an employee shall not be less than the amount determined under section 204(c)(2)(B) with respect to the employee's accumulated contribution."

(3) If—

(A) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act, and

(B) such plan is amended to reflect the amendments made by this subsection,

any plan amendment described in subparagraph (B) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the 1986 Code or section 204(g) of ERISA.

SEC. 302. EFFECTIVE DATE.

Except as otherwise provided in this title, any amendment made by this title shall take effect as if included in the provision of the Pension Protection Act to which such amendment relates.

I. LEGISLATIVE BACKGROUND

H.R. 4845 was introduced by Chairman Rostenkowski on June 16, 1988, and included the provisions in H.R. 4333 (the Technical Corrections Act of 1988) that amended Titles I and IV of the Employee Retirement Income Security Act of 1974 (ERISA) and that amended corresponding provisions of the Internal Revenue Code. H.R. 4845 makes technical and clarifying corrections to the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, and the Pension Protection Act (included in the Omnibus Budget Reconciliation Act of 1987). The provisions of H.R. 4845 were removed from H.R. 4333 as amended. H.R. 4845 was jointly referred to the Committee on Ways and Means and the Committee on Education and Labor.

The Committee on Ways and Means met in executive session on July 14, 1988, on the provisions of H.R. 4845, and ordered the bill favorably reported with an amendment in the nature of a substitute.

The amendments made by this bill are intended to correct, clarify, or conform various recently enacted tax provisions. Provisions in the bills are generally effective as if included in the original legislation, unless otherwise indicated. Provisions in the bills for which no descriptions are provided are clerical in nature or are transition rules.

II. EXPLANATION OF THE BILL

A. Amendments Related to the Tax Reform Act of 1986

1. Vesting standards (sec. 101(a) of the bill and sec. 1113 of the Reform Act)

Present Law

Under present law, a plan (other than a multiemployer plan) is not qualified unless a participant's employer-provided benefit vests at least as rapidly as under 1 of 2 alternative schedules. A plan satisfies the first schedule if a participant has a nonforteitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent at the end of 6 years of service, and 100 percent at the end of 7 years of service.

In the case of a multiemployer plan, a participant's accrued benefit derived from employer contributions is required to be 100-percent vested no later than upon the participant's completion of 10 years of service. This exception applies only to employees covered by the plan pursuant to a collective bargaining agreement.

Prior to the Act, special vesting rules applied to class-year plans. A class-year plan was a profit-sharing, money purchase, or stock bonus plan that provided for the separate vesting of employee rights to employer contributions on a year-by-year basis. The minimum vesting requirements were satisfied under prior law if the plan provided that a participant's rights to amounts derived from employer contributions with respect to any plan year were nonforfeitable not later than the close of the fifth plan year following the plan year for which the contribution was made.

The imposition of the new vesting rules described above, including the repeal of class-year vesting, generally apply to plan years beginning after December 31, 1988, with respect to participants who have at least 1 hour of service after the effective date.

Explanation of Provision

The repeal of class-year vesting was not intended to adversely affect the vesting status of any participant. To fulfill this intent, the bill provides a special rule applicable to plans that after October 22, 1986, used class-year vesting. Whether a plan falls within this category is to be determined without regard to any amendment adopted after October 22, 1986, eliminating class-year vesting.

Plans that fall within the above category are to apply a special rule to any employee that has an hour of service (1) before the adoption of any amendment eliminating class-year vesting, and (2) on or after the first day of the first plan year for which the repeal of class-year vesting is applicable to such employee with respect to the plan. Under this special rule, for the year described in (2) above and any subsequent year, the employee's nonforfeitable right to the employee's accrued benefit derived from employer contributions is to be determined under the class-year vesting schedule that was eliminated if such schedule would yield a larger nonforfeitable right than the new vesting schedule.

In addition, the bill clarifies that a matching contribution is not treated as forfeitable merely because the contribution is forfeitable if the contribution it matches is an excess contribution (sec. 401(k)(8)(B)), an excess deferral (sec. 402(g)(2)(A)), or an excess aggregate contribution (sec. 401(m)(6)(B)).

2. Reversions of plan assets (sec. 101(b) of the bill and sec. 1132 of the Reform Act)

Present Law

The Reform Act imposed a 10-percent nondeductible excise tax on any reversion directly or indirectly received by an employer maintaining a pension plan. It is unclear under certain circumstances whether an employer may directly or indirectly receive a reversion on termination of a pension plan in order to satisfy the employer's liability to pay health benefits to former employees.

Explanation of Provision

The bill provides that, notwithstanding any other provision of law, in the case of a qualified pension plan and a welfare benefit plan, the excess assets of the pension plan may be transferred to the welfare plan to pay retiree health benefits upon termination of the pension plan.

For purposes of this provision, a qualified pension plan and welfare plan are to satisfy the following requirements: (1) the plans are jointly administered pursuant to a collective bargaining agreement between the employer and one or more employee representatives, (2) the welfare benefit plan provides retiree health benefits, and (3) the qualified pension plan has assets in excess of its termination liability and the welfare plan has assets less than the present value of projected benefits (determined at the time the pension plan is terminated).

The bill does not alter the normal rules applicable to reversions. Thus, if a transfer of assets is made pursuant to this provision, the amount transferred is included in the employer's income and is subject to the 10-percent excise tax on reversions.

3. Time required for plan amendments (sec. 101(c) of the bill and sec. 1140 of the Reform Act)

Present Law

The act generally allowed plans that operated in compliance with the new requirements of Title XI of the Act to delay the corresponding plan amendments to a specified time.

Explanation of Provision

The bill provides the same delayed amendment rules (other than those relating to a model amendment to be prescribed by the Internal Revenue Service) with respect to the plan amendments required by Title XVIII of the Act (the technical corrections title) or by the bill itself or by the technical corrections to the Act. This furthers the intent of Congress to ease the administrative burdens on plans by delaying the date required for certain amendments so that, in general, all required amendments can be made in a single year.

In addition, the bill provides that a collective bargaining agreement is not to be treated as terminated merely because a plan is amended pursuant to the agreement to meet the requirement of Title XI or Title XVIII of the Act. The bill does not intend to create an inference that such an amendment otherwise would be considered a termination, or that an amendment made solely to conform a plan to a requirement added by another Act is considered a termination.

4. Health care continuation rules (sec. 102(c) of the bill, sec. 1895 of the Reform Act, sec. 162(k) of the Code, and secs. 602 and 607 of ERISA)

a. Covered employees

Present Law

The health care continuation rules generally require that employers provide qualified beneficiaries with the opportunity to continue to participate for a specified period in the employer's health plan despite the occurrence of a qualifying event that otherwise would have terminated such participation. In general, qualified beneficiaries are defined to include certain "covered employees" and certain family members of covered employees.

Explanation of Provision

Under the bill, the definition of covered employee includes any individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan. Thus, the term "covered employee" can include an individual by virtue of the individual's performance of services as, for example, an independent contractor for a third party or as a partner for his or her partnership.

Pursuant to this provision, for purposes of the health care continuation rules, references to employer or employee in the statute are considered to include persons receiving or performing services

other than in an employer-employee relationship. In addition, persons receiving services are subject to the employer aggregation rules of section 414(t) and the employee leasing rules of section 414(n) to the same extent as if such persons were employers with respect to the service performer.

The changes made by this provision are mandated by national health policy concerns, are limited solely to the health care continuation rules, and are not intended to alter or change in any manner the current statutory and common law relationship between an individual and the person for whom the individual performs services.

This provision applies to plan years beginning after December 31, 1988. Of course, this provision does not apply to a plan prior to the date that the health care continuation rules generally apply to the plan.

b. New coverage

Present Law

Under the health care continuation rules, continuation coverage provided may be terminated upon the occurrence of certain events. One such event is the coverage of the qualified beneficiary under the group health plan of an employer other than the employer providing the continuation coverage.

Explanation of Provision

The bill deletes the provision allowing continuation coverage to be terminated upon the coverage of the qualified beneficiary under the group health plan of an employer other than the employer providing the continuation coverage.

This provision is intended to carry out the purpose of the health care continuation rules, which was to reduce the extent to which certain events, such as the loss of one's job, could create a significant gap in health coverage. If a qualified beneficiary receiving group health coverage from another employer is willing to pay up to 102 percent of the applicable premium for continuation coverage (which he or she may be required to pay by the employer providing the continuation coverage), this is a strong indication that the new employer group health coverage has left a significant gap in the qualified beneficiary's health coverage. This is especially true when the new employer group health coverage excludes coverage for a preexisting condition that is covered by the continuation coverage.

This provision applies to plan years beginning after December 31, 1988. Of course, this provision does not apply to a plan prior to the date that the health care continuation rules generally apply to the plan.

c. Payment

Present Law

Under the health care contination rules, if a qualified beneficiary elects continuation coverage under a plan, the plan is to permit

payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

Explanation of Provision

The bill clarifies that a plan may not require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. This delayed due date for an initial premium does not prevent the collection of a premium for the period of delay.

d. Multiple qualifying events

Present Law

Under present law, if an individual obtains health care continuation rights by virtue of a reduction of hours or separation from service of the covered employee, the maximum period of continuation coverage is 18 months. However, if the individual obtains health care continuation rights by virtue of a reduction of hours of the covered employee and the covered employee separates from service within 18 months following the reduction in hours, the maximum period of continuation coverage is 36 months from the date of reduction of hours.

Explanation of Provision

It is inappropriate to extend the period of continuation coverage to 36 months when a separation from service occurs following reduction in hours because the maximum period of coverage following either event is only 18 months.

Under the bill, if an individual obtains health care continuation rights by virtue of a reduction of hours and then, within 18 months, the employee separates from service, the maximum period of continuation coverage is 18 months from the date of the reduction of hours.

The provision is effective for plan years beginning after December 31, 1988. Of course, the provision does not apply to a plan prior to the date that the health care continuation rules generally apply to the plan.

5. Technical corrections to the Retirement Equity Act of 1984 (sec. 102(d) of the bill, sec. 1898 of the Reform Act, sec. 417 of the Code, and sec. 205 of ERISA)

Present Law

Under present law, a plan is required to notify participants of their rights to decline a qualified preretirement survivor annuity before the applicable election period. Under the Act, the period during which notice is required to be provided to an individual is the latest of the following periods: (1) the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year in which the participant attains age 35; (2) a reasonable period of time after the individual becomes a plan participant; (3) a reasonable period of time after the survivor benefit applicable to a participant is no longer subsi-

dized (as defined in sec. 417(a)(4)); (4) a reasonable period of time after the survivor benefit provisions (sec. 401(a)(11)) become applicable with respect to a participant; or (5) a reasonable period after separation from service in the case of a participant who separates from service before attaining age 35.

Explanation of Provision

The bill clarifies that the notice period in the case of a participant who separates from service before age 35 overrides any other period during which notice might be required. In such a case, the bill provides that the notification period is a reasonable period after separation without regard to any other required notice periods.

This provision is effective for distributions after the date of enactment of the bill.

B. Amendments Related to the Omnibus Reconciliation Act of 1986 (sec. 201 of the bill, sec. 9203 of the Reconciliation Act of 1986, sec. 411(a)(8) of the Code, and sec. 3(24)(B) of ERISA)

Present Law

Under present law, for purposes of the qualified plan rules, the term "normal retirement age" means the earlier of (1) normal retirement age under the plan, or (2) the latest of (a) age 65, (b) in the case of a participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the commencement of participation, or (c) in the case of a participant not described in (b), the 10th anniversary of the commencement of participation.

Explanation of Provision

Under the bill, normal retirement age is defined to mean the later of (1) age 65, or (2) the 5th anniversary of the time a plan participant commenced participation in the plan.

C. Amendments Related to the Pension Protection Act

1. Minimum Funding Standard and Deductions

a. Modifications of minimum funding standard (sec. 301(a) of the bill, sec. 9303 of the Pension Protection Act, sec. 412 of the Code, and sec. 302 of ERISA)

(1) Deficit reduction contribution

Present Law

Under the Act, additional minimum funding requirements apply to defined benefit plans (other than multiemployer plans) if the assets of the plan are less than 100 percent of current liability. For such plans, the amount otherwise required to be charged to the funding standard account is increased by the sum of (1) the excess of (a) the deficit reduction contribution over (b) certain charges and credits to the funding standard account, plus (2) the unpredictable contingent event amount. The deficit reduction contribution is equal to the sum of (1) the unfunded old liability amount, and (2) the unfunded new liability amount.

Unfunded old liability generally includes unfunded liabilities as of the beginning of the first plan year beginning after December 31, 1987 (determined without regard to plan amendments after October 16, 1987). The unfunded old liability amount is increased by the amount necessary to amortize over 18 plan years the unfunded existing benefit increase liability, which in general is certain increases in liabilities due to benefit increases under collective bargaining agreements ratified before October 17, 1987. Unfunded existing benefit increase liability is unfunded current liability determined by (1) taking into account only liabilities attributable to the benefit increase, and (2) by reducing plan assets by the plan's current liability determined without regard to the benefit increase.

Unfunded new liability is the unfunded current liability determined without regard to the unamortized portion of the unfunded old liability and the liability with respect to any unpredictable contingent event benefits (without regard to whether or not the event has occurred).

The Act's new funding rule for unpredictable contingent event benefits is effective with respect to plan years beginning after December 31, 1988. However, the new rule does not apply to benefits with respect to which the event on which the benefit is contingent occurred before October 17, 1987. Such benefits are funded under the pre-Act rules; that is, generally as an experience loss.

Explanation of Provision

Under the bill, as under the Act, unfunded existing benefit increase liability is unfunded current liability determined by (1) taking into account only liabilities attributable to the benefit increase, and (2) by reducing plan assets by the plan's current liability determined without regard to the benefit increase. The bill clarifies that the calculation in (2) does not reduce plan assets below zero.

Under the bill, unfunded new liability is the unfunded current liability determined without regard to (1) the unamortized portion of the unfunded old liability (2) the unamortized portion of the unfunded existing benefit increase liability, and (3) the liability with respect to any unpredictable contingent event benefits (without regard to whether or not the event has occurred). The bill thus conforms the treatment of unamortized existing benefit increase liability to the treatment of unamortized old liability for purposes of determining unfunded new liability.

The bill provides that the new funding rule for unpredictable contingent event benefits applies to such benefits with respect to which the event on which the benefit is contingent occurs in a plan year beginning after December 31, 1988. Benefits with respect to which the contingency occurs in a plan year beginning before January 1, 1989, are subject to the otherwise applicable funding rules, generally as an experience loss. This change in the effective date is made to eliminate issues arising with respect to transition from the pre-Act funding rule to the Act's funding rule for benefits with respect to which the contingency occurs after October 16, 1987, and before a plan year beginning after December 31, 1988.

(2) Current liability

Present Law

The Act provides that, in determining current liability, certain preparticipation service is to be disregarded. Unfunded current liability is the excess of the plan's current liability over plan assets. For this purpose, plan assets are reduced by any credit balance in the funding standard account.

Explanation of Provision

In accordance with the legislative history, the bill provides that the rule disregarding certain preparticipation service does not apply with respect to a participant who does not, at the time of becoming a participant, have years of service in excess of the years required for plan eligibility.

The bill also provides that the rule disregarding preparticipation service is elective. The rule was intended to provide relief for employers in certain situations, for example, if the employer establishes a new plan that takes into account past service. The rule does not need to be imposed where the employer does not need such relief. The bill provides that the election not to take advantage of the rule may be revoked only with the consent of the Secretary. Of course, if an employer does disregard preparticipation service, such service is disregarded for all purposes in calculated

current liability. Thus, for example, it would be disregarded for purposes of the deduction rules as well as the minimum funding rules.

The bill provides that assets are to be reduced by any credit balance in the funding standard account for purposes of the new funding requirements (sec. 412(l)), and that, in other places where the term "unfunded current liability" is used, the Secretary may provide for such a reduction. Unfunded current liability is relevant not only for purposes of the new minimum funding requirements, but also for a number of other purposes under the Act. In calculating unfunded current liability, it is appropriate to reduce assets by any credit balance in the funding standard account for some purposes (such as the new funding rules) but not for others.

It is anticipated that no reduction will be made for purposes of the rule permitting deductions up to the amount of unfunded current liability (Code sec. 404(a)(1)(D)), the lien on missed contributions (Code sec. 412(n)), the security requirement for certain benefit increases (Code sec. 401(a)(29)), or the additional Pension Benefit Guaranty Corporation (PBGC) premium (ERISA sec. 4006(a)(3)(E)).

(3) Valuations

Present Law

Present law provides that a determination of experience gains and losses and a valuation of the plan's liability is to be made not less frequently than once every 3 years, except that such determination is to be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

Explanation of Provision

The bill provides that plan valuations are to be made not less frequently than annually. Annual valuations are necessary under the Act's minimum funding rules and the new full funding limit because the minimum and maximum contributions for a plan year depend on the plan's funded status for that year.

(4) Steel employee plans

Present Law

The Act provides a special funding transition rule with respect to steel employee plans. The contribution required under this special rule is, in general, the sum of (1) the required percentage of the current liability of the plan, plus (2) a portion of the unpredictable contingent event benefit liability. The required percentage depends in part on the plan's funded current liability percentage. In calculating the funded current liability percentage for this purpose, the unpredictable contingent event benefit liability and contributions relating to such liability are disregarded.

Explanation of Provision

For purposes of calculating the funded current liability percentage under the steel employee plan rule, the bill provides that unpredictable contingent event benefit liability, contributions relating

to such liability, and income on such contributions are disregarded. The exclusion of income on such contributions is consistent with the Act's intent to provide a separate funding rule for unpredictable contingent event benefit liability.

b. Time for contributions (sec. 301(b) of the bill, sec. 9304 of the Pension Protection Act, secs. 412 (c) and (m) of the Code, and secs. 302 (c) and (e) of ERISA).

Present Law

The Act requires that installment payments of estimated contributions be made throughout the plan year. This requirement applies to plans subject to the minimum funding standards other than multiemployer plans.

A special installment payment rule applies with respect to unpredictable contingent event benefits. Under this rule, the otherwise required installment is increased by the greater of (1) the amount of unpredictable contingent event benefits paid during the 3-month period preceding the month in which the installment is due, and (2) 25 percent of the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years.

If a required installment is not paid in full by the due date for the installment, then the funding standard account is charged with interest on the underpayment at the rate that is the greater of (1) 175 percent of the applicable Federal mid-term rate, or (2) the plan rate in effect under section 412(b)(5).

The Act clarifies that the employer is required to notify plan participants and beneficiaries and the PBGC if the employer fails to make required contributions with respect to a plan.

The Act provides that a lien arises if required contributions are paid and the unpaid balance of required contributions exceeds $1 million. The lien provision is effective with respect to plan years beginning after December 31, 1987. Contributions originally due before the effective date, including contributions that would have been due before the effective date but were waived, are not subject to the lien, but are taken into account in determining whether the $1 million threshold is met.

Explanation of Provision

The bill clarifies that the installment payment requirement applies only to defined benefit plans (other than multiemployer plans) that are subject to the minimum funding requirements. Thus, under the bill, the installment payment requirement does not apply to money purchase pension plans. This is consistent with the general purpose of the pension provisions of the Act, which is to address problems associated with single employer defined benefit pension plans.

The bill modifies the special installment payment rule with respect to unpredictable contingent event benefits to conform the rule to the funding rule for such benefits. Under the bill, the otherwise required installment (determined without regard to unpredict-

able contingent event benefits) is increased by the greater of (1) the unfunded percentage (as determined under sec. 412(l)(5)(A)) of unpredictable contingent event benefits paid during the 3-month period preceding the month in which the installment is due, or (2) 25 percent of the amount required to be contributed for the plan year under the amortization rule for such benefits (sec. 412(l)(5)(A)(ii)).

The bill adds a sanction for failure to notify plan participants and beneficiaries of the failure to make required contributions. Under the bill, a court may require an employer who fails to comply to pay the affected participants and beneficiaries up to $100 per day from the date of the failure. This sanction is consistent with the existing sanctions under ERISA for failure to provide participants and beneficiaries with required information.

The bill conforms the Act to the legislative history by providing that the notice requirement with respect to participants and beneficiaries is effective with respect to plan years beginning after December 31, 1987.

The bill clarifies that the interest rate on underpayments of required installments is the greater of (1) 175 percent of the applicable Federal mid-term rate, or (2) the rate of interest used under the plan to determine costs (including any adjustments required for plans subject to the new funding rules under section 412(l)). Thus, under the bill, the interest rate on underpayments will be at least equal to the interest rate the plan is using under the minimum funding rules.

c. Funding waivers (secs. 301 (c) and (d) of the bill, secs. 9306 and 9307 of the Pension Protection Act, sec. 412(f) of the Code, and sec. 303 of ERISA)

Present Law

Under the Act, the interest rate on waived contributions in the case of a plan other than a multiemployer plan is the greater of (1) 150 percent of the applicable Federeal mid-term rate, or (2) the rate of interest used under the plan in determining costs.

Prior to the Act, a funding waiver could not be granted with respect to a plan for more than 5 of any 15 consecutive plan years. Under the Act, a waiver cannot be granted with respect to a plan for more than 3 of any 15 consecutive plan years. This provision of the Act applies to any waiver application submitted after December 17, 1987, and any waiver granted pursuant to such an application. In applying the Act's new limit on the number of waivers, the number of waivers which may be granted pursuant to applications submitted after December 17, 1987, is to be determined without regard to waivers granted with respect to plan years beginning before January 1, 1988.

Explanation of Provision

The bill provides that, for purposes of determining the interest rate on waived contributions, adjustments required for plans subject to the new funding rules under section 412(l) are taken into account in calculating the plan's interest rate. Thus, under the bill, the interest rate on waived contributions will be at least equal to

the interest rate the plan is using under the minimum funding rules.

Under the bill, the reduction in the number of waivers that can be granted within a 15-year period is effective with respect to waivers for plan years beginning after December 31, 1987. In determining whether the new frequency requirement is satisfied, waivers granted with respect to plan years beginning before January 1, 1988, are not taken into account. Waivers for plan years beginning before January 1, 1988 are subject to the pre-Act frequency limit. Under the effective date provisions of the Act with respect to frequency of waivers, it would be possible to obtain a waiver that did not count for purposes of the pre-Act frequency limit or the Act's frequency limit. These changes address this situation.

d. Limitation on interest rate (sec. 301(d) (1) and (2) of the bill, sec. 9307(e) of the Pension Protection Act, sec. 412(b) of the Code, and sec. 302(b) of ERISA)

Present Law

Under the Act, the interest rate used for certain purposes under the minimum funding rules is required to be (1) within a specific permissible range, and (2) within that range, consistent with the interest rate which would be used by an insurance company to establish the amount it would charge an employer to satisfy the liabilities under the employer's plan. The permissible range under the Code is, in general, not more than 10 percent above and not more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during a 4-year period.

Explanation of Provision

To reflect the legislative history, the bill provides that these special interest rate rules apply for purposes of determining current liability and for purposes of determining a plan's required contribution under the funding rules applicable to plans with assets less than current liability. Thus, the bill clarified that these special rules do not apply for all purposes under the minimum funding rules. For purposes for which these special rules do not apply, the plan's interest rate is required to be reasonable in light of the experience of the plan and reasonable expectations.

The bill conforms the definition of the permissible range in ERISA to the Code definition of the permissible range.

e. Effective date of changes relating to amortization periods (sec. 301(d)(3) of the bill, and sec. 9307(f) of the Pension Protection Act)

Present Law

In the case of plans other than multiemployer plans, the Act reduced the period for amortizing experience gains and losses from 15 years under prior law to 5 years. This change is effective for years beginning after December 31, 1987.

Explanation of Provision

The bill provides that the change in the amortization period for experience gains and losses applies to gains and losses established in years beginning after December 31, 1987, to conform to the legislative history of the Pension Protection Act. The bill also provides a special transition rule for certain 1987 gains and losses. Under this rule, any experience gain or loss determined by a valuation occurring as of January 1, 1988, is treated as established in a year beginning before January 1, 1988.

2. Employer Access to Plan Assets; Limitations on Employer Reversions upon Plan Termination (sec. 301(e) of the bill, sec. 9311 of the Pension Protection Act, and sec. 4044(d) of ERISA)

Present Law

The Act provides that a plan amendment or provision providing for or increasing a reversion to the employer is not effective before the end of the fifth calendar year following the date the provision or amendment is adopted. The Act also provides a transition rule for certain plans that allows plan amendments within one year of the effective date to take effect without regard to the 5-year rule.

The Act also made other changes relating to the distribution of assets on termination that are effective, in general, with respect to distress terminations with regard to which notices of intent to terminate are provided after December 17, 1987, and plan terminations instituted by the PBGC after December 17, 1987.

Explanation of Provision

The bill clarified the effective date of the 5-year rule. First, the bill clarifies that the rule applies, in general, to plan provisions or amendments adopted after December 17, 1987.

Second, the bill clarified the transition rule. Under the bill, a plan that does not contain any provision regarding the distribution of residual assets can be amended, within one year from December 17, 1987, to provide for an employer reversion without regard to the 5-year rule. If, however, after December 17, 1987, a plan provides for distribution of residual assets to employees, then the transition rule does not apply.

With respect to the other changes relating to distribution of assets, the bill clarifies that the changes also apply to standard terminations with respect to which the notice of intent to terminate is issued after December 17, 1987.

3. Treatment of Plan Terminations

a. Elimination of ERISA section 4049 trust (sec. 301(f) of the bill, sec. 9312 of the Pension Protection Act, and sec. 4022 of ERISA)

Present Law

Prior to the Act, the employer's liability payments for unfunded benefits in excess of guaranteed benefits were paid to a speical trust established under section 4049 of ERISA. The Act eliminates

the section 4049 trust, and provides that the employer's entire liability following plan termination is to be paid to the PBGC. The PBGC then is to pay both guaranteed and nonguaranteed benefits to participants and beneficiaries. The amount of nonguaranteed benefits paid to participants and beneficiaries depends on the applicable recovery ratio.

In the case of terminations where the unfunded benefit liabilities exceed a certain amount, the applicable recovery ratio is based on the actual recovery from the employer (the "large plan" rule). In the case of other terminations, the applicable recovery ratio is based on the average recovery from prior terminations with respect to which the notice of intent to terminate is provided after December 17, 1987 (the "small plan" rule). In order to enable the PBGC to establish the recovery ratio for plans subject to the small plan rule, in the case of terminations with respect to which notices of intent to terminate are provided on or before December 17, 1990, payments to participants and beneficiaries are based on recovery from the particular termination. The Act provides that the transition rule does not apply if the recovery ratio is not finally determined as of December 17, 1990.

The provisions relating to the elimination of the section 4049 trust apply to distress terminations with respect to which notices of intent to terminate are provided after December 17, 1987, and terminations instituted by the PBGC after such date.

Explanation of Provision

The bill provides that, in determining the recovery ratio under the small plan rule, the terminations taken into account are those with respect to which the notice of intent to terminate was provided after December 17, 1987, and within the 5 fiscal years of the Federal Govenment ending before the year in which the date the notice of intent to terminate the plan for which the recovery ratio is being determined was provided.

The bill provides that the transition rule for small plans applies to all terminations with respect to which the notice to terminate is provided after December 17, 1987, and on or before December 17, 1990. Thus, the transition rule is not limited to situations where the recovery ratio is finally determined as of December 17, 1990. This limit on the transition rule unduly limited the application of the transition rule.

The bill clarifies that the provisions apply to all terminations where notice of intent to terminate is provided after December 17, 1987. The bill also makes additional conforming changes needed to reflect the elimination of the section 4049 trust.

b. Standards for termination (sec. 301(g) of the bill, sec. 9313 of the Pension Protection Act, and sec. 4041(c) of ERISA)

Present Law

In order to terminate a plan in a distress termination, the plan sponsor and each member of the sponsor's controlled group must demonstrate that it meets one of several distress criteria as of the date of plan termination. In a distress termination, the plan admin-

istrator is required to provide certain information relating to plan assets and benefits to the PBGC.

Explanation of Provision

The bill provides that the distress criteria must be satisfied as of the proposed date of plan termination, and clarifies that the information relating to plan assets and benefits is to be provided as of the proposed termination date and, if applicable, the proposed distribution date.

4. PBGC Premiums (sec. 301(h) in the bill, sec. 9331 of the Pension Protection Act, and sec. 4006 of ERISA)

Present Law

Under present law, an additional PBGC premium is required to be paid with respect to a single-employer defined benefit pension plan if the plan has unfunded vested benefits. Also under present law, contributions to a plan are not deductible if they exceed the full funding limitation (sec. 404). Under the Omnibus Reconciliation Act of 1987, the full funding limitation is the excess (if any) of (1) the lesser of (a) 150 percent of current liability, or (b) the accrued liability under the plan (determined in a specified manner), over (2) the value of the assets of the plan (sec. 412(c)(7)).

Explanation of Provision

Under present law, it is possible that deductible contributions to a plan cannot be made to a plan for a plan year because of the full funding limitation, but that an additional PBGC premium is required with respect to the plan. In order to avoid this result, the bill provides that if deductible contributions to a plan cannot be made for a plan year because of the full funding limitation, no additional premium is required with respect to the next year.

5. Miscellaneous

a. Security rules for underfunded plans (sec. 301(i) of the bill, sec. 9341 of the Pension Protection Act, sec. 401(a) (29) of the Code, and sec. 307 of ERISA)

Present Law

In the case of a defined benefit plan (other than a multiemployer plan), if a plan amendment is adopted and the funded current liability percentage of the plan (taking into account the amendment) is less than 60 percent, then the contributing sponsor (or any member of the contributing sponsor's controlled group) is required to provide security to the plan. The amount of the security is the excess of (1) the lesser of (a) the amount of plan assets necessary to increase the funded current liability percentage under the plan to 60 percent, or (b) the amount of the increase in current liability under the plan attributable to the plan amendment, over (2) $10 million.

The security provisions are contained both in the Code (as a qualification requirement) and in ERISA. The Code provision provides

that the Secretary of the Treasury may issue regulations with respect to partial releases of the security by reason of increases in the funded current liability percentage.

The provisions generally apply to plan amendments after December 22, 1987. Under a special rule, in the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before December 22, 1987, the provisions do not apply to plan amendments adopted pursuant to such collective bargaining agreements.

Explanation of Provision

The bill clarifies that, in determining the amount of security that must be provided, the increase in current liability attributable to the plan amendment and all plan amendments after December 22, 1987, are taken into account. Thus, for example, an employer cannot avoid the security requirement by adopting a series of plan amendments, each one of which separately results in an increase in current liability that is below the $10 million threshold but which together increase current liability by more than the $10 million threshold.

The bill provides that the security provision does not apply to plans that are not subject to the minimum funding requirements. Thus, for example, the provision does not apply to church or governmental plans.

The bill conforms the ERISA provision to the Code provision by clarifying that the Secretary of the Treasury has regulatory authority with respect to partial release of the security.

The bill provides that a contributing sponsor that is required to provide security is required to notify the PBGC of the plan amendment. This change conforms the statutory provisions to the legislative history. The PBGC may assess a penalty, payable to the PBGC, of up to $1,000 for each day the required notice is not provided. This penalty is consistent with the penalty added by the Act for the failure to provide certain other information to the PBGC. Under the bill, as under the Act, the penalty is to reflect the materiality of the failure to provide the required information.

With respect to the special effective date for collectively bargained plans, the bill provides that extensions, amendments, or modifications of the bargaining agreement on or after December 22, 1987, are disregarded.

The bill also extends the $1,000 penalty, described above, to failures to notify the PBGC of the failure to make required contributions.

b. Reporting requirements (sec. 301(j) of the bill, sec. 9342 of the Pension Protection Act, and sec. 103(d) of ERISA)

Present Law

Under the Act, the annual report for the plan must contain additional information regarding the funded status of the plan if the value of plan assets is less than 60 percent of current liability.

The Act authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 for each day the plan administrator fails to file an annual report.

Explanation of Provision

The bill reflects the legislative history by providing that the reporting requirement applies with respect to a plan if the value of plan assets is less than 70 percent of current liability. The bill also clarifies that, in the case of plans with assets less than 70 percent of current liability, the annual report is to include the percentage which the value of plan assets is of current liability.

The bill authorizes the Secretary of Labor to bring a civil action to collect the penalty for failure to file an annual report. The bill also clarifies that the plan administrator is liable for the penalty.

c. Coordination of provisions of the Internal Revenue Code of 1986 with provisions of ERISA (sec. 301(k) of the bill, sec. 9343 of the Pension Protection Act, and sec. 403 of ERISA)

Present Law

Under ERISA, plan assets cannot be returned to the employer prior to termination of the plan, except in certain limited circumstances. Prior to the Act, section 403(c)(3) of ERISA provided for the return of contributions which would otherwise be excess contributions as defined in section 4972(b) of the Code, to the extent that section 4972 provides for return of the contributions. In a conforming change, the Act replaced the references to section 4972 of the Code with a reference to section 4979 of the Code, which relates to contributions that do not satisfy the special nondiscrimination rules applicable to qualified cash or deferred arrangements and similar arrangements.

Explanation of Provision

The bill deletes section 403(c)(3) of ERISA. It is no longer necessary in light of recent changes in the Code.

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), section 4972 of the Code provided an excise tax on excess contributions to certain plans maintained by self-employed individuals, and for the return of such contributions in order to avoid the excise tax. As part of TEFRA's changes conforming the rules applicable to plans maintained by self-employed persons generally to the rules applicable to other qualified plans, section 4972 (in its then present form) was repealed.

Neither present-law section 4972 of the Code nor present-law section 4979 of the Code provides for return of contributions to the employer. Thus, neither section should be a basis for the exception to the general rule prohibiting return of assets to the employer prior to plan termination.

d. Plan investment in employer securities (sec. 301(1) of the bill, sec. 9345 of the Pension Protection Act, and sec. 407 of ERISA)

Present Law

The Act amended the definition of qualifying employer security. This change was intended to apply only to plans that are not individuals account plans.

Explanation of Provision

The bill clarifies that the new definition of qualifying employer security applies only to plans that are not individual account plans.

e. Interest rate on accumulated contributions (sec. 301(m) of the bill, sec. 9346 of the Pension Protection Act, sec. 411(c)(2) of the code, and sec. 204(c)(2) of ERISA)

Present Law

Present law prescribes rules for determining what portion of an employee's total accrued benefit under a defined benefit pension plan is derived from employer contributions and what part is derived from employee contributions. Present law provides that the accrued benefit derived from employer contributions is the excess of the total accrued benefit over the accrued benefit derived from employee contributions.

In the case of a defined benefit pension plan providing an annual benefit in the form of a single life annuity beginning at normal retirement age, the accrued benefit derived from employee contributions is, in general, an annual benefit equal to the employee's accumulated contributions multiplied by the applicable conversion factor.

An employee's accumulated contributions are equal to the sum of (1) mandatory contributions made by the employee; (2) interest under the plan to the end of the last plan year to which ERISA does not apply; and (3) with respect to each subsequent plan year, interest on the amounts determined under (1) and (2) at a rate equal to 120 percent of the mid-term applicable Federal rate (AFR) as in effect for the first month of the plan year. Prior to the Pension Protection Act, the interest rate in (3) is 5 percent. However, the accrued benefit derived from employee contributions cannot exceed the greater of (1) the employee's accrued benefit under the plan, or (2) the accrued benefit derived from employee contributions determined without regard to interest.

Explanation of Provision

There has been some uncertainty as to the effect of the Pension Protection Act interest rate rules for employee contributions, and the proper method for determining the accrued benefit derived from employee contributions. In addition, the present-law rules for determining an employee's accrued benefit produce inconsistencies in some cases. In order to resolve these issues, the bill modifies the rules relating to the accrued benefit derived from employee contributions.

The bill provides that, in calculating an employee's accumulated contributions, interest on mandatory contributions is credited (1) for the period up to the date for which the determination is being made at the rate determined under the present-law rules, and (2) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age, at the interest rate used under the plan in calculating the present value of accrued benefits (sec. 417(e)(3)). The conversion of the employee's contributions (plus interest) to an annuity is calculated using the interest rate used under the plan in determining the present value of accrued benefits (sec. 417(e)(3)).

The bill also eliminates the present-law limitation on the accrued benefit derived from employee contributions.

Some employers may have already amended their plans to conform to the interest rate rule of the Pension Protection Act, or may have adopted a new plan that conforms to such rule. If such plans are amended to conform to the bill, in some cases this might be considered a prohibited reduction in accrued benefits (sec. 411(d)(6)). Accordingly, the bill provides a transition rule that permits such plans to be amended to conform to the new rules without violating the reduction in accrued benefit rules.

III. BUDGET EFFECTS

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effect on the budget of the committee action on the bill (H.R. 4845).

The bill as amended by the committee is estimated to increase fiscal year budget receipts by $30 million in 1989, $50 million in 1990, and $50 million in 1991, for a net increase in fiscal year budget receipts of $130 million for the 1989–1991 period. (The revenue-increase item included in this bill is also included in H.R. 4333, as amended and ordered favorably reported on July 14, 1988.)

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the committee on the motion to report the bill (H.R. 4845). The bill as amended was ordered favorably reported in executive session by voice vote.

B. Other Matters

In compliance with clause 2(l)(3) and 2(l)(4) of Rule XI of the House of Representatives, the following statements are made with respect to the committee action on the bill.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee review of necessary technical and clarifying corrections to certain provisions of the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, and the Pension Protection Act of 1987, that the committee concluded that it is appropriate to enact the provisions of the bill as amended by the committee.

H.R. 4845 was introduced on June 16, 1988. The provisions of the bill as introduced were taken from H.R. 4333 (Technical Corrections Act of 1988), and included those provisions of H.R. 4333 under joint jurisdiction of the Committee on Ways and Means and the Committee on Education and Labor. H.R. 4845 was jointly referred to these two committees.

The Committee on Ways and Means considered H.R. 4845 in executive session on July 14, 1988, and ordered the bill favorably reported with an amendment in the nature of a substitute.

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made by the bill as reported involve reduced tax expenditures of $130 million for fiscal years 1988–1991.

Budget Authority

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made by the bill as reported involve no new budget authority.

Congressional Budget Office estimate

With respect to subdivision (C) of clause 2(l)(3), the committee states that the Director of the Congressional Budget Office has examined the committee's budget estimate and agrees with the estimate (as presented in Part III of this Report).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 1988.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4845 with amendments, as ordered reported by the Committee on Ways and Means on July 14, 1988.

H.R. 4845 would provide technical corrections to pension and employee benefit-related provisions of the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986 and the Pension Protection Act of 1987. It includes a provision that would postpone the effective date by which certain companies would need to increase their pension funding. The CBO concurs with the Joint Committee on Taxation's estimates of H.R. 4845, which are shown on the table below. These estimates were done without final bill language and could be subject to change based on final language.

REVENUE EFFECTS OF H.R. 4845

[By fiscal year, in millions of dollars]

	1989	1990	1991
Revenue Gain	30	50	50

If you wish further details on this estimate, please contact me or you may wish to have your staff contact Larry Ozanne or Marianne Page of the Tax Analysis Division.

Sincerely,

C.G. NUCKOLS
(for James L. Blum, Acting Director).

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been sub-

mitted by the Committee on Government Operations regarding the subject matter of the bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the bill as amended is not expected to increase costs or prices in the national economy, as the bill only makes technical and clarifying changes in existing law.

V. CHANGES IN EXISTING LAW BY THE BILL AS REPORTED

In the opinion of the committee, in order to expedite the business of the House of Representatives, it is necessary to dispense with the requirements of clause 3 of Rule XIII of the Rules of the House of Representatives (relating to showing changes in existing law made by the bill as reported).

○